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ABSTRACT

Recently American schools have attempted to provide more family-oriented services. As school psychologists expand their roles to include home-school consultation in the treatment of students' educational and psychological problems, they must understand the legislation related to various policy issues in public schools. School psychologists must be familiar with procedural protection legislation concerning notices to parents, parental consent for a child's assessment or placement, required meetings and formal hearings on the placement of handicapped children, and the rights of parents and school personnel to appeal the outcome of hearings. Legal mandates and ethical standards require unbiased and nondiscriminatory psychological evaluation procedures; therefore, school psychologists should examine their attitudes and behaviors in terms of racial, ethnic, religious, and sex or other biases. Because restrictions for confidentiality and data privacy vary from state to state, and additional legal references aimed at school records and student data may be contradictory, psychologists must learn the correct procedures for disclosing information about their student-clients. School psychologists have an opportunity to broaden their practices, but political acumen is necessary to assure that psychological services are not compromised as legal mandates change. (NRB)

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# CURRENT LEGISLATIVE AND POLICY ISSUES RELATED TO SCHOOL PSYCHOLOGICAL SERVICES

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# Current Legislative and Policy Issues Related to School Psychological Services[1]

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The primary aim of this paper is to describe current policy issues affecting the practice of psychology in the schools, particularly in relation to home-school consultation. As the decade of the 1980's begin, there are several concrete, definable issues that are underscored by legislated mandates of one type or another. The term "legislation" is broadly used here to include obligatory requirements found in federal or state laws, judge-made law and court rulings, and rules or regulations promulgated by state and federal agencies. Local policies and professional codes of ethics are only sometimes legally binding, but must also be considered in the broad context of mandates affecting psychological practice in schools. The specific provisions of PL 94-142 and other federal legislation will not be presented since there has been much written already [for explanation of the impact of federal legislation on school psychology see Bersoff (1975), Mowder (1979), Prasse (1978), and Pryzwansky and Bersoff (1978)]. Instead, some general remarks will be offered on the consequences of massive legislation on psychology practiced in a school setting.

School psychologists should be aware of the legislation related to

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at least four distinct policy issues that have surfaced in public schools: procedural protection, bias and discrimination, confidentiality and data privacy, and the expanding role of public schools. Before discussing these issues, it should be helpful to explain why we should be so concerned. The following quote is taken from an article written by a school psychology trainer (Trachtman, 1979):

> Day in and day out the school psychologist is inundated with new rules, new regulations, reports of new legislation or recent court rulings that will shortly produce further new rules and regulations, and editorials and positions and taskforce recommendations that may shortly lead to additional legislation or further legal rulings that will yield still more rules and regulations. (p. 378)

There are probably few school psychologists who would disagree with Professor Trachtman's description of our current state of legal affairs, and most would agree that massive legislation has changed the way we practice in schools. The cloud of legalistic confusion that continues to surround our profession has a positive side, however, and we would be wise to understand it. The laws, rules, regulations and court decisions related to our practice in schools also "contain within them the seeds for broad and exciting roles as well" (p. 386). In fact, we have been duly warned by Bardon (1980) that the survival of our profession partially depends on immediate attempts to broaden our practice. The current interest in home-school consultation is an example of one such opportunity, but this area of services should be understood in terms of the policy issues which created this opportunity.

In recent years there has developed a strong impetus in American schools to provide more family-oriented services (Lombard, 1979). These services

include the use of parents and siblings as a source of assessment data, the involvement of parents and other family members with intervention strategies, increased emphasis on home-school partnership particularly for early childhood programs, and the sharing of psychological findings and reports. The opportunity for home-school consultation in treating educational and psychological problems of students is a formidable challenge to the traditional role of school psychologists. Upon accepting this challenge, we should be aware of at least four policy issues and related legislation which are highly visible in public schools today.

## Procedural Protection

When procedural protection is discussed the emphasis is usually placed on safeguards for parents or the student. A careful reading of state and federal regulations will reveal that the major categories of procedural safeguards also offer protection to school personnel as well. The following comments are adapted from Julka (1980):

Notice. Before a school district initiates or changes a student's evaluation findings and/or educational placement, a written notice must be received by parents. Among other things, this notice must contain a description of the evaluation procedures, tests and psychological records used as a basis for proposed or refused action. The federal Bureau of Education for the Handicapped (BEH) has additionally proposed that generic categorization not be relied upon in notices to parents. The means that it is no longer acceptable to merely inform parents that their child has been referred to a psychologist for an "IQ test" or for "achievement testing." If this kind of generic categorization is used, they must be accompanied by a description of what is meant by "IQ" or "achievement test" and references to specific instruments.

Many school districts use a form letter to parents explaining the reasons for referral to a psychologist and the nature of the evaluation to be done, but psychologists should always know exactly what parents have been told about a prospective evaluation. This is especially important when parents contact the school after receiving a notice and their questions are answered by a non-psychologist. There is a serious ethical concern underlying this situation, if the psychologist merely assumes that parents (or students in come cases) understand and agree to the psychological procedures that may be used. It is very tempting for a school administrator to downplay a parent's concern about the vagaries of psychological testing, and to assure the parent that only routine educational testing will be done that does not delve into family secrets. A psychologist who actively pursues evidence of family distress in this situation could be committing a serious procedural or even ethical impropriety. A related concern is the determination of psychological tests and procedures to be used, which in practically all instances should be determined by the psychologist who sees the student and not by administrative fiat or the convenient use of form letters with a checklist of tests.

Consent. The requirement for written parental consent for an assessment or initial placement of a student in a special education program does not appear in federal law, but actually initiated in PL94-142 regulations promulgated by BEH. It is also surprising to many school psychologists that these federal regulations do not require written consent for assessments conducted after the student's initial placement (only written notice is required by PL 94-142). Recent federal regulations have added some confusion, however, with the following mandate (Federal Register, April 3, 1980):

(b) No student may be required, as part of any program of the

Education Division, to submit to...psychological examination, testing or treatment, in which the primary purpose is to reveal information concerning any of the following...

(2) Mental and psychological problems potentially embarassing to the student or his family.

(3) Sex behaviors and attitudes.

(4) Illegal, anti-social, self-incriminating and demeaning behavior.

(5) Critical appraisals of other individuals with whom respondents have close family relationships.

The applicability of this mandate is not clear at this point, but it has tremendous implications for all psychologists working in schools. Not only could this mandate apply to handicapped students, but written parental and in some cases even student consent could be required for all forms of psychological practice in schools.

Opportunity to Be Heard. Both federal and state legislation require initial and periodic meetings on the placement of handicapped students. The school psychologist is not required, per se, to attend these meetings except that a few states require psychological input for some disability areas. If parents use these meetings to raise questions or object to findings, the explanation and possible defense of psychological data could be done by non-psychologists. This circumstance not only increases the risk of misinterpretation of psychological data, but it may result in inadequate explanations to concerned parents. As long as psychological data is crucial in making placement decisions, parents should have the opportunity to pose questions or concerns directly to the psychologist doing the evaluation. Secondarily, but also important, the psychologist

should have the opportunity to explain and defend his/her findings. School psychologists should realize that these planning meetings provide them an opportunity to be heard. Pryzwansky and Bersoff (1978) offer some useful suggestions for communicating psychological findings to parents in such circumstances.

The use of formal hearings is another means for parents and school personnel to have an opportunity to be heard. It is important for psychologists to know that students are required to remain in the current educational placement until administrative or judicial hearings are completed. The psychological consequences in these cases should be carefully examined and formally shared with parents and other school personnel, since delayed services could be harmful.

Experience has shown that psychologists, or at least psychological data, receive close scrutiny at formal hearings for at least two reasons: (1) psychological data is usually crucial in determining the existence of a special education handicap, and (2) any party involved with the hearing has the right to confront, cross-examine and compel the attendance of witnesses (Julka, p. 11). Psychologists who speak out in the midst of controversy have some protection against retaliation, and this right may even extend to privately employed school psychologists (Education Daily, June 10, 1981).

Appeals. Both parents and school personnel have the right to appeal the outcome of a formal hearing to the state education agency. Further appeal is still possible by bringing a legal suit in state or federal court. Following an appeal, psychologists come under even closer scrutiny, usually by more tenacious inquisitors. The increase in formal hearings and appeals has thrust school psychologists in practically every state into the forefront of far-reaching court rulings. The consequences do not always have

national significance, but the proceedings are intensified because the litigants usually incur expenses and the school may be subject to damages.

Bias and Discrimination

There are numerous legal mandates and ethical standards that require psychological evaluation procedures to be unbiased and nondiscriminatory. There is also a closely related prohibition against the use of sole evaluation criteria in the placement of handicapped students. Collectively, these mandates have had the greatest impact on changing the traditional role of school psychologists. There is a long history of court rulings and professional controversy on this issue, and the most recent shock waves have been caused by the Larry P vs Riles litigation. Bias and discrimination is not restricted to formal testing, however, and can be found in decision-making procedures as well. Prasse (1978) argues that

> School psychologists should become more critical of "favorite" instruments, and understand the racial and cultural bias of the instruments and the potential for misuse and abuse...School psychologists must acquire a knowledge and understanding of the habits, customs and languages of groups whose cultures are different from those of the psychologists and/or the educational system. (p. 594)

This is sage advice for school psychologists as they extend their services into home-school consultation. In fact, it can be argued that it is an ethical obligation for psychologists to immediately examine their attitudes and style of practice for even the sublests forms of bias for racial, ethnic, sex, religious or other reasons. This obligation not only applies to white, Anglo-Saxon and protestant professionals working with minority

clients, but applies equally to minority psychologists working with a diverse clientele.

## Confidentiality and Data Privacy

There is more legislation for the twin concerns of confidentiality and data privacy than any other policy issue in public schools. Consequently, this is often the most complicated and confusing issue to resolve. For psychologists, confidentiality and data privacy are both basically concerned with access to information about individuals. It would be a futile exercise to try to briefly explain the legal and ethical problems related to this issue, and it would be better left to legal experts. For the purposes of this paper, the following remarks outline the salient features of this policy issue. Confidentiality primarily refers to protection of testimony or professional opinion about an individual. Data privacy is more concerned with the release and storage of information. There are numerous (or perhaps innumerable is more correct) legal references which are found in all forms of legislation that directly affect the way the psychologist should share information about his/her clients. One reason there are so many references is the special attention given to public schools, since they are the primary child development agencies in our society. To illustrate the complex nature of this issue, the following vignette will be used. This case is taken from the author's experience and the references to state and federal laws actually existed at the time:

> A school psychologist employed by a mental health center that contracted with schools for psychological services received a request from a school superintendent. The psychologist was asked to determine the extent of chemical abuse among junior high students. In a subsequent counseling session, it was revealed that a 13-year-old

female student was pregnant and highly dependent on light drugs. The girl's mother suspected the pregnancy but the psychologist refused to discuss it in accordance with the girl's request, since state law granted privileged communication for psychologists (even with unemancipated minors). The school principal demanded information from the psychologist to determine if the student was using drugs on school property. The psychologist refused all requests for information citing privileged communication with the student, but the principal challenged this by claiming that the psychologist-client relationship was with the school and not with the student.

During this same period, the psychologist received a subpoena to appear in court for testimony regarding child custody because the parents had initiated divorce proceedings. Shortly after the subpoena, the psychologist was contacted by a welfare worker who requested information about the pregnancy, since a claim was made about sexual contact with a close relative of the girl. After the psychologist refused this request, the welfare worker cited a state law which requires all confidential data to be released in cases of suspected child abuse. Furthermore, the worker argued that the state Board of Psychology's Code of Ethics obligated the psychologist to release information which would improve the student's mental health.

The student's mother threatened legal action against the school because parental permission was never given for her daughter to receive psychological counseling. The school attorney countered by citing a state law which gives students the right to seek treatment for pregnancy or alcohol abuse without parental consent. The same law gives the psychologist the option of disclosing information to the parents

or school officials. By this time the psychologist had finished a handwritten summary of findings which was not shared with anyone. The mother's attorney stated that a psychological report was part of the student's school record and that state law, federal law and state board of education rules made student records available to parents. After retaining an attorney, the psychologist was advised that the federal law on disclosure of school records applied only to governmental units, and the psychologist was exempted because he/she technically worked for a mental health center. (Some discussion ensued over the status of a mental health center as a governmental agency. The State Board of Psychology ruled that employment by a mental health center was private and not public practice.) The psychologist's attorney successfully prevented the sharing of the handwritten summary with the argument that is was not a report at all, but merely the psychologist's case notes which may be kept confidential and undisclosed.

While this particular case was extraordinarily complicated, it is not facetious. As school psychologists become more involved with family-oriented services, they will become more enmeshed in family problems where the sharing of information and opinions on clients is restricted. The restrictions are highly varied from state to state, and there are additional legal references specifically aimed at school records and student data which may be contradictory. The consequences of improprieties in sharing information on a client can be serious and costly, so psychologists are well advised to learn the correct procedures for disclosing information on their student-clients.

## Expanding Role of Public Schools

In the 1970's the "back to basics" movement in public schools was caused by more than declining achievement scores. Among educators who

favored a return to emphasizing basic studies it was partially a counter movement against the expanding role of schools. Much was written about the provision of human services in public schools (Hobbs, 1975; Lombard, 1979; 1980; Trachtman, 1981; White, 1973), and the school psychologist's role has been greatly affected by a "mental health revolution" (Hobbs, 1964) that created a demand for community and parent-based interventions often intimately involved with schools (Cowen and Lorion, 1975; 1976; Pryzwansky, 1974). It would be short-sighted of school psychologists to just concentrate on special education legislation, since myriad sources of legislation impinged on school psychological practice as it expanded into this area and as schools assume more human service responsibilities.

Not only are school psychologists increasing their involvement with parents and families, but there is a parallel increase in other social institutions for many forms of family services that will overlap with the school's responsibilities. School psychologists will face increased demands for expert testimony and sharing of psychological findings with other human service agencies in such areas correctional or criminal placements, divorce action and child custody studies, adoption and foster placements, reporting and investigation of child abuse or neglect.

With the expanding role of school psychologists and the massive legislation requiring services to handicapped students, there will follow an increased expectation of services from students and their parents. This increased expectation of services is now threatened by shrinking financial resources to schools and by a pervasive conservatism among our nation's policy-makers. If one thing is certain, however, it is clear that school psychologists have an opportunity to broaden their practice and help improve the human condition with our psychological expertise. This is a very

important opportunity because the survival of our profession partially depends on it, but more importantly because the school setting provides the means to reach students and families that have needs for this expertise. School psychological services can be available practically everywhere in the country. We must complement our professional zeal and advocacy with political acumen and activity so that policy-makers will continue to make this opportunity available, and to assure that our services are not compromised as legal mandates change.

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